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July 18, 2016

Federal Election Commission
Office of Complaints Examination & Legal Administration
Attn: Mr. Jeff S. Jordan
999 E Street, N.W.
Washington, DC 20436

Re: MUR 7090 (America Leads)

Dear Mr. Jordan:

America Leads (AL) and Timothy A. Koch, in his official capacity as treasurer, through counsel, hereby respond to the complaint received in this matter.

This complaint is similar to the complaint filed in MUR 7019 in so far as the same subject contribution received by AL is at issue. The difference is that the complainants in MUR 7019 knew the law sufficiently so as not to allege that AL violated federal campaign finance law.

The complainant here alleges that he put AL on notice of the illegality of the contribution and, therefore, under 11 C.F.R. § 103(b)(2), AL had 30 days to refund the contribution. To the contrary, he did not provide any evidence of illegality, and AL did not refund the contribution.

AL received and deposited the contribution from Décor Services, LLC on January 28, 2016, and disclosed the contribution promptly on its next regularly-filed FEC report. A Commission regulation *requires* committees to report contributions made by a "person"¹ via written instrument, absent contrary evidence, according to the written instruments received:

¹ The reference to a "person" signing the instrument necessarily anticipates a "committee", "corporation", and "any other organization, or group of persons". 11 C.F.R. § 100.10 (definition of "person"); *see also* 52 U.S.C. § 30101(11).

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Absent evidence to the contrary, any contribution made by check, money order, or written instrument shall be reported as a contribution by the last person signing the instrument prior to delivery to the candidate or committee. [11 C.F.R. § 104.8(c).]

Complainant does not suggest that AL reported the Décor Services, LLC contribution contrary to this regulation. Rather, he cites the Statement of Reasons (SOR, April 1, 2016) of Commissioners Petersen, Hunter and Goodman in MURs 6485, -87, -88, 6711 and 6930, which was issued a little over two months after AL received the subject contribution, and which states that "[w]here direct evidence of this purpose [of 'intentionally funnel[ing funds] through a closely held corporation or corporate LLC for the purpose of making a contribution'] is lacking, the Commission will look at whether, for instance, there is evidence indicating that the corporate entity *did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions*" (emphasis added).

Complainant, however, fails to further quote this SOR: "such contributions shall be *presumed lawful unless specific evidence demonstrates otherwise*" (emphasis added). He may have omitted this because both his complaint and his May 2nd letter to AL (which he did not enclose with his complaint), presents no *specific* evidence that Décor Services, LLC "did not have income from assets, investment earnings, business revenues, or bona fide capital investments, or was created and operated for the sole purpose of making political contributions". Complainant reaches a rash conclusion based only on the date Décor Services received LLC status.

The date an entity obtains LLC or corporate status, however, does not necessarily evidence when such an entity began business operations and, even if it did, having such a status 16 days before making a contribution does not by itself – to borrow irrelevant regulatory language by analogy – necessarily give rise to a fact "that would lead a reasonable person to inquire whether the source of the funds"² was someone other than the entity making the contribution.

Commissioners Ravel and Weintraub may be correct that, under the standard put forth in the SOR, "it would be virtually impossible to prove" an intention to make a contribution through a dummy entity (SOR, April 13, 2016). If so, complainant's recourse is not a complaint against an innocent recipient but a statutory change or a Commission rulemaking.

Thus the circumstances under which a Super PAC would have the duty to question and research the ultimate source of an otherwise facially-permissible entity contribution

² § 110.20(a)(4)(iii) (foreign national contributions).

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would have to be set forth by regulation. There is hence no affirmative duty for treasurers to scour the internet or perform other research to confirm (including in response to allegations) that each contributing entity has a *raison d'être* other than to make a contribution.

Consequently, given the absence of specific evidence that Décor Services, LLC was not the "true source" of its contribution, the Commission should find that there is no reason to believe AL and its treasurer violated the FECA.

Sincerely,

Squire Patton Boggs (US) LLP

A handwritten signature in black ink, appearing to read "Glenn M. Willard". The signature is written in a cursive, flowing style.

Glenn M. Willard